IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 61 OF 2003.

State. ... Appellant.

Versus

Rupesh Gauli alias Topo,
r/o Karaswada near Water
Tank, Mapusa. ... Respondent.

Mr. S.N. Sardessai, Public Prosecutor for the Appellant.

Mr. I. Agha, Advocate for the Respondent under Legal Aid Scheme.

Coram : P.V. HARDAS, J.

Date : 23rd March 2004.

ORAL JUDGMENT.

The State, being aggrieved by the Judgment of the Judicial Magistrate, First Class, Bicholim, dated 30th April 2003, in Criminal Case No. 29/S/2001/B, acquitting the accused for offences punishable under Sections 452, 427, 325 and 394 of the Indian Penal Code, has filed the present appeal.

2. The facts, in brief, as are necessary for the decision of this appeal are set out hereunder:-

P.W.8 A.S.I. Govind Bhandari took up the investigation on 4th May 2001 as the earlier Investigating Officer A.S.I. Yeshwant Parab had expired. P.W.8 A.S.I. Bhandari filed a charge-sheet against the accused in this case. It appears that the investigation commenced on the basis of a complaint, at

Exhibit P.W.1/A, filed by P.W.1 Jankibai Karapurkar. Crime was registered on the basis of the said complaint and scene of offence panchanama, at Exhibit P.W.3/A came to be drawn on 1st February 2001, in the presence of P.W.3 Shantaram Kalangutkar. On 9th February 2001, an attachment panchanama also came to be drawn in his presence. The complainant, who had injuries, was examined by P.W.5 Dr. Cheryl D'Souza, who found that the complainant had a hematoma approximately 2 x 2 cms. on the left parietal region of the scalp and a swelling with deformity on the left forearm. The complainant was referred for X-ray. The hurt certificate of P.W.1 Jankibai is at Exhibit P.W.5/A. P.W.1 Jankibai was examined by the Radiologist P.W.6 Agnes Mascarenhas, who found that there was evidence of fracture of both bones of the left forearm.

3. The learned trial Court, vide Exhibit 4, framed a charge against the respondent/accused for offences punishable under Sections 452, 427, 326 and 394 of the Indian Penal Code. The accused denied his guilt and claimed to be tried. The prosecution in support of its case examined 8 witnesses. The learned trial Court, for the reasons set out in the Judgment, acquitted the respondent/accused of the offences for which he was charged. Hence, this appeal by the State.

4. P.W.1 Jankibai states that on 31st January 2001, at about 4.45 p.m. she was present alongwith her son P.W.7 Sagar Karapurkar in her house. The accused came to her house and told her that her daughter owed money and that P.W.1 Jankibai should give him the money. P.W.1 Jankibai told the accused that her daughter was not there and she does not know anything about the money. The accused is alleged to have stated that he was sent by one Mahesh Vengurlekar for bringing the money. The accused had entered in the house and then removed a purse containing an amount of Rs. 7,000/-. P.W.1 Jankibai then pushed the accused but the accused took a cricket bat, which was kept behind the door, and stated that he would take the Kinetic Scooter. The accused assaulted P.W.1 Jankibai with the cricket bat on her head causing injuries. The accused then swung the bat on the scooter breaking the side light of the scooter. P.W.1 Jankibai again pushed the accused but the accused hit the cricket bat on her left forearm, as a result of which, her bangles broke. P.W.7 Sagar raised cries for help. P.W.1 Jankibai started running after the accused but she fainted and fell down. People from neighbourhood, namely, Lalan Shirodkar, Pandhari Kerkar and Vijaya Kalangutkar rushed to their help. P.W.1 Jankibai states that one Chandrakant Gad lodged a complaint and she was taken to the Asilo Hospital for treatment. Thereafter, she lodged her complaint, at

Exhibit P.W.1/A. She has identified M.O.1 as the same cricket bat with which she was assaulted.

5. In her cross-examination she states that she is a housewife and her husband is abroad. The said purse containing money was lying on the table in the front room. The main door of the house, at the relevant time, was open.

6. P.W.7 Sagar states that, on the day of the incident, the accused had entered their house and began inquiring with P.W.1 Jankibai about her daughter. The accused informed P.W.1 Jankibai that he had been sent by one Mahesh. On being asked by P.W.1 Jankibai, the accused had disclosed his name as Topo. The accused informed P.W.1 Jankibai that he required money 'of my elder's sisters marriage'. P.W.1 Jankibai told the accused that she was not aware of any such money and the accused then said that in case money was not given that he would 'show' to P.W.1 Jankibai. The accused then took a cricket bat, which was kept leaning against the wall and hit the Kinetic Honda, which was in the room. The right side light and the tail light broke. P.W.1 Jankibai went to stop the accused and the accused hit P.W.1 Jankibai with the cricket bat on the left side of the head and left hand. The accused then took a purse containing cash of Rs. 7,000/-. P.W.1 Jankibai

followed the accused outside but fell down immediately unconscious. Neighbours rushed there and P.W.7 Sagar informed the police. P.W.7 Sagar states that he was aged 13 years at the time of the incident. In the cross-examination he has admitted that he learnt from his mother P.W.1 Jankibai that the accused had taken the purse containing Rs. 7,000/-.

7. P.W.4 Arvind Kalangutkar states that he had witnessed a fight between P.W.1 Jankibai and the accused. At that time he was sitting at a distance of 50 metres from the house of the complainant in the field. He had seen the accused entering the verandah of P.W.1 Jankibai and had heard shouts from the house of P.W.1 Jankibai. Thereafter he had seen the accused come out of the house followed by P.W.1 Jankibai, who had an injury on the hand. The accused went away while P.W.1 Jankibai walked a few steps and then fell unconscious. He was declared hostile and in the cross-examination on behalf of the prosecution he admitted that when the accused came out of the house of P.W.1 Jankibai, he had a cricket bat in his hand. In the cross-examination on behalf of the accused he admitted that his statement was recorded by the police after six days of the incident. He has further admitted that the accused had come out of the house of P.W.1 Jankibai after barely 5 to 10 minutes.

8. The learned trial Court found that the prosecution has not been able to establish that any money was owed by the daughter of P.W.1 Jankibai either to the accused or to one Mahesh. The prosecution had chosen not to pursue the link and record the statement of Mahesh. The learned trial Judge also found that there was no consistency in the evidence of P.W.1 Jankibai and P.W.7 Sagar. The learned trial Judge also found that P.W.1 Jankibai stated that the complaint had been lodged by one Chandrakant Gad but the complaint was not produced and Gad had turned hostile. The learned trial Judge, therefore, found that the prosecution had not proved the offences beyond reasonable doubt.

9. With the assistance of the learned counsel appearing for the parties, I have perused the evidence. Though the reasons given by the learned trial Judge for disbelieving the prosecution witnesses is cryptic, I find that the evidence of P.W.1 Jankibai and P.W.7 Sagar are not consistent. It is true that the evidence of no two eye witnesses will be identical and there is bound to be slight variations in the evidence. Slight variations in the evidence is not a ground to jettison the evidence of these witnesses completely. However, in the present case, as rightly found by the trial Court, at the very threshold, the prosecution has not been able

to establish the reason for the accused to have entered the house of P.W.1 Jankibai. Prosecution has chosen not to examine Mahesh, to whom the daughter of P.W.1 Jankibai owed money. It appears that the prosecution has suppressed the genesis of the incident and a different colour and hue is given to the material on record. If that be the case, though P.W.1 Jankibai is an injured witness, no reliance can be placed on her evidence. In view of that, according to me, the trial Court was correct in not placing any reliance on the evidence of P.W.1 Jankibai and P.W.7 Sagar.

10. This is an appeal against acquittal and the view taken by the learned trial Court appears to be a possible view on the basis of the evidence on record and, as such, in the absence of any perversity in the reasoning, interference in an appeal against acquittal is not warranted. Accordingly, Criminal Appeal is dismissed.

(P.V. HARDAS)
JUDGE.

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